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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/414,764	10/07/1999	SUZANNE M. PAULEY	460.1791USU	3820

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TATA

Office Action Summary

Application No.

09/414,764

Applicant(s)

PAULEY ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7, 13, 14, 16, 18, 19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 13, 14, 16, 18, 19 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 5, 7, 13 – 14, 16, 18 – 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bletzinger (US 2,761,449) and further in view of Kaczmarzyk et al. (US 4,300,561).

With respect to claim 1, Bletzinger discloses a dry expanding tampon pledget comprising a plurality of non-absorbent fibers and a plurality of absorbent fibers (col. 3, lines 16 – 25; col. 5, lines 47 – 55) wherein the plurality of non-absorbent fibers and the plurality of fibers are blended together to form the dry expanding tampon pledget (col. 5, lines 47 – 55); and wherein immediately after complete ejection from an applicator, and prior to contact with menses, the dry expanding tampon pledget has a free diameter at a widest point from about 25% to about 300% larger than a diameter for the dry expanding tampon pledget in the applicator.

The difference between Bletzinger and claim 1 is the provision that the plurality of absorbent fibers is a combination of rayon and superabsorbent fiber, and wherein a ratio of rayon fiber to superabsorbent fibers is about 70/30 (col. 1, lines 14 – 20)

Kaczmarzyk teaches a tampon comprising a plurality of absorbent fibers is a combination of rayon and superabsorbent fiber, and wherein a ratio of rayon fiber to superabsorbent fibers is about 70/30 as set forth in col. 1, lines 14 – 20.

It would have been obvious to one of ordinary skill in the art to modify the tampon of Bletzinger to provide the claimed type and amount of fibers taught by Kaczmarzyk because the claimed type and amount of fibers vastly improve fluid capacity and capillary suction pressure as taught by Kaczmarzyk in col. 1, lines 14 – 21.

The examiner contends that if the tampon of Bletzinger is modified as taught above, then the resulting combination would provide the claimed free diameter since the claimed invention and the combination of Bletzinger and Kaczmarzyk would result in an identical product.

As to claim 2, Kaczmarzyk teaches a percent ratio as claimed as set forth in col. 1, lines 14- 21.

With reference to claim 3, Bletzinger discloses the claimed plurality of non-absorbent fibers as set forth in col. 5, lines 36 – 42.

As to claim 5, absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

With reference to claim 7, Bletzinger discloses the claimed denier as set forth in col. 5, lines 47 – 55.

Regarding claim 13, Bletzinger discloses the claimed denier as set forth in col. 6, lines 51 – 54.

As to claim 14, Bletzinger discloses a coverstock as set forth in col. 2, lines 11 – 14.

With reference to claims 16 and 19, see the rejection of claim 1 and Kaczmarzyk col. 1, lines 14 – 21 for the claimed ratio.

As to claim 18, see the rejection of claims 1 and 3.

Regarding claims 22, see the rejection of claims 1 and 3.

Response to Arguments

Applicant's arguments filed August 19, 2005 have been fully considered but they are not persuasive.

With respect to the applicant's arguments that Bletzinger fails to disclose or suggest that immediately after complete ejection from an applicator, and prior to contact with menses, the dry expanding tampon pledge has a free diameter at a widest point from about 25% to about 300% larger than a diameter of the dry expanding tampon pledget in the applicator, the examiner disagrees. A free diameter at a widest point may be considered as any diameter that is from about 25% larger than any diameter of the dry expanding tampon pledget in the applicator. The arguments seem to be directed toward a total diameter at a widest point and a complete diameter in the applicator, however these limitations are not recited in the claims. Therefore, the examiner contends that the applicant's arguments are not commensurate with the claims and the current rejection is maintained.

Further, the applicant argues that Bletzinger selects rayon fibers for other capacities. Nonetheless, Bletzinger teaches the use of rayon fibers which would ultimately perform as the claimed invention. The applicant's mention of col. 8, lines 24 – 31 is noted, but the examiner adds that Bletzinger advises to look for these properties when practicing the invention with other types of fibers.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
Art Unit 3761